

REMARKS

Objection to Claim 5

Claim 5 has been amended to change "...said position of said at least one..." to read "...the position of said at least one..." per the Examiner's suggestion. This amendment to the claim language is not intended to narrow the claim in any way and is solely for the purpose of addressing a minor informality issue. This amendment is believed to resolve the Examiner's objection to claim 5.

§§102-103 Rejections

The Examiner rejects claims 2-3, 8-9, 12-14, 32-37, and 45-49 under §102 over Wan and claims 15-17, 20-21, 23, 26, and 38-42 under §102 over Garceran. The Examiner further rejects claims 4-5 under §103 over Wan in view of Soliman and claims 18-19 under §103 over Garceran in view of Soliman. Applicant respectfully traverses and requests reconsideration.

Claims 15-17, 20-21, 23, 26, and 38-42 (Garceran-based §102 Rejections)

According to the information printed on the face of Garceran, Garceran was filed August 31, 1999 and issued February 18, 2003. According to the §1.131 declaration submitted herewith, the inventor of the present application conceived of the invention claimed in the present application not later than about May 31, 1999, and the application was pursued with reasonable diligence through filing of the application on or about February 5, 2000. Therefore, the inventor of the present application conceived of his invention before the §102(e) effective filing date of Garceran and pursued the idea

with reasonable diligence until the constructive reduction to practice associated with the filing in February 5, 2000. Under §102(e) and MPEP §715, the Garceran patent cannot qualify as prior art. It necessarily follows that all rejections based on Garceran are therefore improper. Applicant therefore submits that claims 15-17, 20-21, 23, 26, and 38-42, and any claims depending therefrom, define patentable subject matter over the cited art.

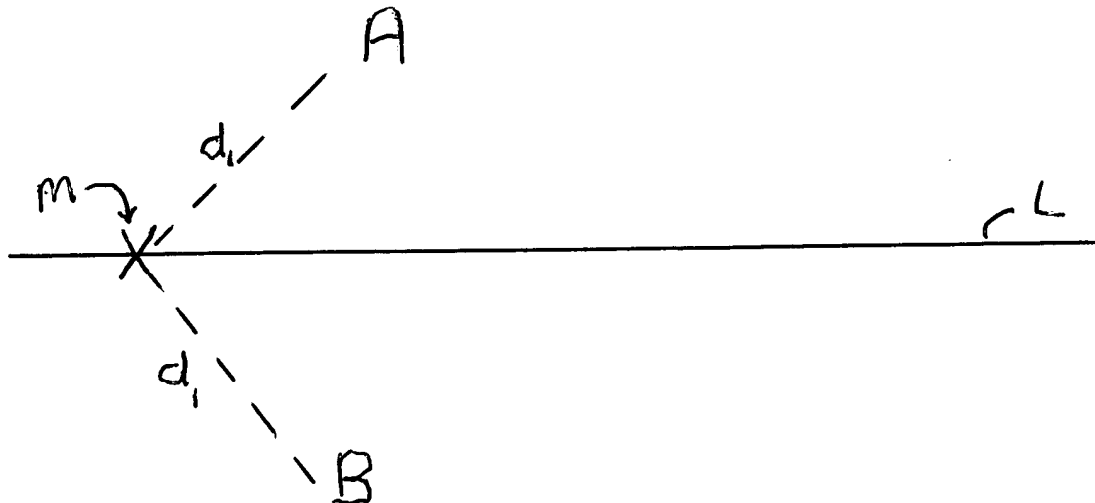
Claims 3, 12-14, 33, 34-35, 37, and 46-48 (Wan-based §102 Rejections)

Independent claim 3 requires, *inter alia*, that the "frequency of performing said channel quality measurements is a function of said position of said mobile station ... wherein ...is a function of the relative position of said mobile station with respect to a first base station serving said mobile station and at least one additional base station." The Examiner asserts that Wan shows such an approach. In support of this position, the Examiner points to Wan col.1, lines 20-30 and col. 2, lines 21-31. In his explanation of these passages, the Examiner appears to confuse *speed* with *relative position*. Specifically, the Examiner states

"...as the mobile station is traveling away from the serving base station as a certain speed, the signal strength is weakening, while at the same time the mobile station is approaching another base station at that speed, wherein the mobile station is detecting a stronger signal strength and wherein this base station has will [sic] eventually become the serving base station."

The Examiner's explanation and reliance on Wan are wrong for a number of reasons. First, Applicant notes that even if a mobile station is moving away from base station A and roughly towards base station B, this does not necessarily mean that the signal strength from B *has to be* increasing. The Examiner's assumption to the contrary

("closer" necessarily equals "better signal") ignores the physical reality of "local fading" that is well known to those of skill in the art. More importantly, the Examiner overlooks that fact that Wan at most teaches varying the measurement frequency based on speed only, while the current invention claims a based-on-position approach. With particular reference to independent claim 3, the difference between Wan's based-on-speed approach and the claimed based-on-relative position approach can be illustrated by a simple example. Referring to the illustration below, assume that the mobile station M is in an area with two base stations A & B.



The mobile station M is at a point X, somewhere along straight line L that is perpendicular to the line between A and B. At point X, the mobile station M must decide whether to change the time period between measurements. According to Wan, the only relevant parameter is the speed of mobile station M along line L. If the speed is high, the period is shorter; if the speed is low, the period is longer. On the other hand, according to the claimed invention, the relevant parameter is the relative position of mobile station M to base stations A & B. As M is traveling along line L, the ratio of the

distances M-to-A and M-to-B does not change, therefore the period between measurements would be left unchanged as M moves along L, *regardless of how fast M is moving*. Viewed another way, the present invention looks to the position of M, while Wan looks at the rate of change in position of M. The two concepts are not the same, and one does not teach or suggest the other. It is apparent then that, contrary to the Examiner's assertion, Wan does not teach or suggest "wherein the frequency of performing said channel quality measurements is a function of said position," and certainly not "a function of the relative position of said mobile station with respect to a first base station serving said mobile station and at least one additional base station." Accordingly, Wan cannot anticipate the claimed method, and the rejection of independent claim 3, and its dependent claims 12-14, must fail.

Likewise, independent claim 33 includes the limitation "vary the frequency of performing said channel quality measurements as a function of the position of said mobile station ... based on the relative position of said mobile station with respect to a first base station serving said mobile station and at least one additional base station." For reasons similar to those discussed above with respect to independent claim 3, Applicant submits that independent claim 33 and its dependent claims 34-35, and 37, define patentable subject matter over the cited art.

With respect to independent claim 46, this claim requires "the frequency of performing said task is a function of said position of said mobile station ... function of the relative position of said mobile station with respect to a first base station serving said mobile station and at least one additional base station." For reasons similar to those discussed above with respect to independent claim 3, Applicant submits that

independent claim 46 and its dependent claims 47-48, define patentable subject matter over the cited art.

In view of the above, Applicant submits that independent claims 3, 33, and 46, and their dependent claims 12-14, 34-35, 37, and 47-48, define patentable subject matter over the cited art.

Claims 2, 8-9, 32, 36, 45, and 49 (Wan-based §102 Rejections)

With regards to independent claims 8, 36, and 49, and their dependent claims 2, 9, 32, 45, and 49, these claims are likewise neither anticipated nor rendered obvious over Wan. First, all of these claims include a limitation requiring the frequency of performing the periodic task (e.g., channel quality measurements) to be "a function of said position of said mobile station." As pointed out above, Wan's speed-based approach does not teach or suggest the claimed position-based approach. Remember that change in position (Wan) is independent and separate from the position itself (current application).

Second, all of these claims include a limitation relating the frequency of performing the periodic task (e.g., channel quality measurements) to the "length of time said mobile station remains in said position." The Examiner points to Wan col. 2, lines 21-31 in an attempt to show this feature. Further, the Examiner hypothesizes that "time is function of the mobile stations [sic] speed and if the mobile station is not moving, the scan rate is decreased." Applicant first notes that at non-relativistic speeds time is not a function of speed *per se*; thus, the Examiner's statement that "time is a function of []

speed" appears to contravene widely accepted principles of physics. Second, nothing in Wan suggests looking at how long the mobile station is in a particular location, rather than the speed of the mobile station. The passage of Wan cited by the Examiner says absolutely nothing about a mobile station's duration in one location, and instead only mentions mobile stations that are *moving* rather than stationary. Indeed, even if it is known that a mobile station has a speed of zero, this tells us nothing about how long it has had a speed of zero. It is the latter that is addressed by independent claims 8, 36, and 49. Such is neither shown nor suggested by Wan, which is solely speed-based.

In view of the above, Applicant submits that claims independent claims 8, 36, and 49, and their dependent claims 2, 9, 32, 45, and 49, define patentable subject matter over the cited art.

Claims 4-5 and 18-19 (Soliman-based §103 Rejections)

Dependent claims 4-5 and 18-19 are patentable for the reasons set forth above with respect to their corresponding independent claims. In addition, these claims are patentable as the Examiner has failed to set forth a *prima facie* case of obviousness under the well established law governing §103. Claim 4-5 and 18-19 all require that the "position of said at least one additional base station is transmitted to said mobile station by said first base station." On this point, the Examiner points solely to Soliman, stating "Soliman discloses power control using position and mobility information. Soliman further discloses where a base station send the position of an additional base station to a mobile station." However, *the Examiner has failed to point to any passage in Soliman that supports this assertion.* As such, the Examiner has failed to comply with the

mandates of the MPEP. The undersigned has reviewed Soliman and can find no teaching whatsoever of sending the position of a base station to a mobile terminal, much less a teaching of sending the position of another base station to the mobile terminal by a first base station. As such, the Examiner's assertion is completely unsupported by Soliman. Therefore, the §103 rejections of claims 4-5 and 18-19 over Soliman are legally improper and must fail. If the Examiner maintains the rejections, the Examiner is requested to point to specific passages in Soliman that make the alleged teaching(s) so as to clarify the issues for appeal as required by MPEP §706.07.

Renewed Request for Telephone Interview with Supervisor

As the present case has been subjected to six (6) Actions to date, the undersigned specifically requests a telephone interview with the Examiner and the Examiner's supervisor if the current rejections are made final, or the case is not otherwise allowed.

Dated: July 3, 2003

Respectfully submitted,
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